

ZEE LAW GROUP, P.C.

Tappan Zee, Esq. (Bar #216118)

tzee@zeelawgroup.com

9660 Telstar Avenue

El Monte, CA 91731

Phone: (626) 588-1600

Facsimile: (626) 602-3827

**Attorneys for Respondent and Creditor,
COLLECT ACCESS LLC**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA - SAN DIEGO

In Re:

JOSE J. HERNANDEZ

Debtor.

) Case No.: 11-15921-MM7

)

) Chapter 7

)

) Judge: Honorable Margaret M. Mann (Dept. 1)

)

)

**CREDITOR'S OPPOSITION TO FURTHER
CONTEMPT ORDERS AND MOTION FOR
FURTHER ATTORNEY FEES**

)

) Date: October 2, 2014

) Time: 10:00 a.m.

) Dept.: 1

) Room: 218

)

)

1 **TO THE HONORABLE MARGARET M. MANN:**

2 **I. INTRODUCTION/FACTS**

3 COLLECT ACCESS, LLC ("COLLECT ACCESS") by and through their counsel,
4 TAPPAN ZEE and ZEE LAW GROUP, P.C. hereby gives Notice of their Opposition to
5 Attorneys for Debtor, JORGE HALPERIN and ELIZABETH SWILLER'S

- 6 (1) Request for Further Orders of Contempt filed on or about June 25, 2014; and
7 (2) "Application for Costs and Fees Incurred for Filing Motion for Contempt, Additional
8 Attorneys Fees Incurred for 10/02/2014 Hearing" ("8/29/14 Application") for \$2,000
9 AND request to the Court to issue an Order to Show Cause why COLLECT ACCESS,
10 LLC should not be held in civil contempt filed on June 25, 2014 ("Order to Show
11 Cause").

12 Attorneys for Debtor, JORGE HALPERIN and ELIZABETH SWILLER ("Debtor's
13 Attorneys" or "Moving Party"), seek another order of Contempt against COLLECT ACCESS,
14 LLC ("Collect Access") and further attorney fees for seeking such an order pursuant to Federal
15 Rules of Bankruptcy Procedure §9020 based upon an order of contempt but with no new
16 circumstances or facts to rationalize a separate order and based upon the same nucleus of facts of
17 violating a stay order. On May 19, 2014 this court considered the renewed request for additional
18 fees and granted the same, but denied Debtor's attorney's request for \$1,000 in additional fees as
19 they were not connected to filing that original motion, here, Debtor's attorneys attempt to
20 obfuscate that finding by creating a new "filing" despite no further contemptuous conduct on the
21 part of Collect Access. Debtor's counsel points to no law or facts which would support awarding
22 contempt order upon contempt order upon contempt order, because such law does not exist as it
23 would be a waste of judicial resources and an abuse of process.

24
25 **II. ARGUMENT**

26 This Motion is moot as the Order of May 19, 2014 was based on a contempt order that
27 was not objected to and therefore Debtor's Attorneys come before this Court to argue a matter
28 already adjudicated and to further inflate their attorneys' fee award. The Order of May 19, 2014

1 is the same relief that was requested and granted in Moving Party's current motion and is not
2 based on new conduct or law, Debtor's attorney simply seeks to keep taking the same bite at the
3 apple without resorting to other means of enforcement and to be rewarded for that effort by
4 inflating their fees further.

5 Moving Party has continued to waste this Court's precious resources and has refused to
6 employ the proper method of enforcement of this court's order, a writ of execution. *Newland v*
7 *Superior Court* (1995) 40 CA4th 608, 615. Under the Federal Rules of Bankruptcy Procedure an
8 Order is the equivalent of a judgment. See Fed. R. Bankr. P. 9001(7) and 9002(5). Once the
9 finding of contempt has been made and a sanction imposed, the order has acquired all the
10 "elements of operativeness and consequence necessary to be possessed by any judicial order to
11 enable it to have the status of a final decision under § 1291." See *SEC v. Naftalin*, 460 F.2d 471,
12 475 (8th Cir. 1972).

13 The express language of Fed. R. Bankr. P. 9001(7) clearly states that a "judgment" is any
14 appealable order. Here, the judgment was entered by this Court on May 19, 2014 and Collect
15 Access has not appealed such order therefore the order of additional fees of \$1,687.50 is final
16 and cannot further be supplemented by repeated applications for contempt with no new basis.

17 Requesting Sanctions for a Parties' Failure to Pay Sanctions is Impermissible and an abuse
18 of process. The motion before the Court borders on abuse of process as there are other methods
19 which can be employed by the Moving Party to collect on the previously issued order which do
20 not involve the intervention of this Court. The appropriate remedy to enforce a money judgment
21 under Civil Rule 69(a) is a writ of execution, not a motion for contempt; therefore this motion is
22 an improper procedure for enforcing payment. Fed.R.Civ.P. 69(a) states the "Process to enforce a
23 judgment for the payment of money shall be a writ of execution, unless the court directs
24 otherwise." The "otherwise" clause is read narrowly. 7 J. Moore, Moore's Federal Practice p
25 69.02 at 69-10 to -10.1 (2d ed. 1985) states "[A] federal court should not ... enforce a money
26 judgment by contempt or methods ther [sic] than a writ of execution, except in cases where
27 established principles so warrant."
28

1 Moving Party must point to exceptional circumstances or established principles in their
2 case to permit payment of the May 19, 2014 order through seeking another contempt order as the
3 appropriate remedy is a writ of execution. *Shuffler v. Heritage Bank*, 720 F.2d 1141 (to the
4 extent the 2nd order of contempt was intended to enforce payment, it was not sustained.)
5 *Gabovitch v. Lundy*, 584 F.2d 559, 560 n.1 (1st Cir. 1978) ("equitable remedies, even those
6 permitted by Rule 70, are seldom appropriate aids to execution of a money judgment") *Combs v.*
7 *Ryan's Coal Co.*, 785 F.2d 970, 980 (11th Cir. 1986) (although trial court may use the remedy of
8 contempt to enforce an earlier judgment, when a party fails to satisfy a court-imposed money
9 judgment the appropriate remedy is a writ of execution, not a finding of contempt).

10 11 **III. CONCLUSION**

12 For the foregoing reasons, namely that Moving Party has previously been granted the
13 relief originally requested in 2012, Responding Party Collect Access LLC respectfully request
14 that the Court deny Moving Party's instant motion for Contempt and their application for further
15 fees.

16
17 Dated: September 18, 2014

ZEE LAW GROUP, P.C.

18 /s/ Tappan Zee

19 _____
20 Tappan Zee, Esq.
21 Attorneys for Creditor
COLLECT ACCESS LLC